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Attorneys for *Qui Tam* Plaintiff

2006 JUN -6 PM12:21
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES, the STATES of
CALIFORNIA, DELAWARE,
FLORIDA, HAWAII, ILLINOIS,
LOUISIANA, MASSACHUSETTS,
NEVADA, NEW HAMPSHIRE,
TENNESSEE, TEXAS and
VIRGINIA, the LOUISIANA
MEDICAL ASSISTANCE
PROGRAMS and the DISTRICT
OF COLUMBIA, *ex rel.*,
Thomas Morrow,

Plaintiffs

v.

PFIZER, INC.,

Defendant

CASE NO. 06-3443 GHK(FMOx)

COMPLAINT FOR VIOLATIONS OF
FALSE CLAIMS ACTS 31 U.S.C.
§3730, et seq; Cal. Govt. Code § 12650
et seq; Del. Code Ann., Title 6, § 1201
et seq; Fla. Stat. 68.081 *et seq*; Haw.
Rev. Stat. § 661-22 *et seq*; 740 Ill.
Comp. Stat. Ann. § 175/1 *et seq*; La.
Rev. Stat. Ann. § 46:439.1 *et seq*;
Mass. Ann. Laws Ch. 12, § 5(A)-(O) *et*
seq; Nev. Rev. Stat. § 357.010 *et seq*;
New Hampshire Rev. Stat. Ann.,
167:61 *et seq*; Tenn. Code Ann. § 71-
5-181 *et seq*; Tex. Hum. Res. Code
§ 36.001 *et seq*; Va. Code Ann. § 8.01-
216.3 *et seq*; and D.C. Code Ann. § 1-
1188.13 *et seq*

JURY TRIAL DEMANDED

LODGED UNDER SEAL
PURSUANT TO 31 U.S.C. §§
3730(b)(2) and (3)

DOCKETED ON CM
JUN 13 2006
BY 00

COMES NOW *QUI TAM* RELATOR-PLAINTIFF Thomas Morrow,
suing for himself and for the United States of America, pursuant to 31 U.S.C. §
3730 *et seq*, the State of California pursuant to Cal. Govt. Code § 12650 *et seq*, the

1 State of Delaware pursuant to Del. Code Ann., Title 6, § 1201 *et seq*, the State of
2 Florida pursuant to Fla. Stat. 68.081 *et seq*, the State of Hawaii pursuant to Haw.
3 Rev. Stat. § 661-22 *et seq*, the State of Illinois pursuant to 740 Ill. Comp. Stat.
4 Ann. § 175/1 *et seq*, the State of Louisiana and the Louisiana Medical Assistance
5 Programs pursuant to La. Rev. Stat. Ann. § 46:439.1 *et seq*, the State of
6 Massachusetts pursuant to Mass. Ann. Laws Ch. 12, § 5(A)-(O) *et seq*, the State of
7 Nevada pursuant to Nev. Rev. Stat. § 357.010 *et seq*, the state of New Hampshire
8 pursuant to New Hampshire Rev. Stat. Ann., 167:61 *et seq*, the State of Tennessee
9 pursuant to Tenn. Code Ann. § 71-5-181 *et seq*, the State of Texas pursuant to
10 Tex. Hum. Res. Code § 36.001 *et seq*, the State of Virginia pursuant to Va. Code
11 Ann. § 8.01-216.3 *et seq*, and the District of Columbia pursuant to D.C. Code
12 Ann. § 1-1188.13 *et seq* and alleges as follows:

13 1. This action is based upon the defendant knowingly causing false
14 claims to be submitted by healthcare providers to Medicaid and other federally
15 funded programs, and the defendant knowingly causing to be used, false records or
16 statements to get false or fraudulent claims paid or approved, by knowingly
17 falsifying certification of compliance with the Stark Act, 42 U.S.C. § 1395nn, and
18 the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). The defendant paid illegal
19 kickbacks to participating physicians in the form of cash payments of between
20 \$800 to \$1,000 per year for each patient whom the participating physicians treated
21 with defendant's growth hormone drugs.

22 I. JURISDICTION

23 2. Jurisdiction over the federal claims asserted herein is based upon
24 federal subject matter pursuant to 31 U.S.C. § 3729 *et seq*.

25 3. Jurisdiction over the state claims asserted herein is based upon 31
26 U.S.C. § 3732(b) and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

27 4. The Court may exercise personal jurisdiction over the defendant
28

1 pursuant to 31 U.S.C. § 3732(a).

2 **II. VENUE**

3 5. Venue is proper in the Central District of California, under 31 U.S.C.
4 § 3732 and 28 U.S.C. §§ 1391(b) and (c) because the defendant transacts business
5 in this District and because the defendant committed acts within this district that
6 violated 31 U.S.C. § 3729.

7 **III. PARTIES**

8
9 6. *Qui tam* plaintiff Thomas Morrow is a licensed physician whose work
10 includes involvement with growth hormone pharmaceuticals. Dr. Morrow is a
11 United States citizen and a resident of the State of Georgia, residing in Alpharetta,
12 Georgia.

13 7. The United States of America, through its agencies, including,
14 Centers for Medicare and Medicaid Services, and its Veterans Administration,
15 among others, has provided funds for prescription pharmaceutical products, and
16 related physician services, which were billed with false certifications of
17 compliance with the Stark Law and the Anti-Kickback Statute.

18
19 8. Each of the States of California, Delaware, Florida, Hawaii, Illinois,
20 Louisiana, Massachusetts, Nevada, New Hampshire, Tennessee, Texas and
21 Virginia, and the District of Columbia, through its respective participation in the
22 Medicaid program, has provided funds for pharmaceutical products which were
23 billed with false certifications of compliance with the Stark Law and Anti-
24 Kickback Statute.

25
26 9. Pfizer, Inc. ("Pfizer"), is a for-profit Delaware corporation with its
27 headquarters located in New York, New York. Pfizer is one of the largest
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1 manufacturers of prescription drugs in the United States, and sells millions of
2 dollars of its prescription pharmaceuticals to Federal, State and District of
3 Columbia medicaid programs, and other Federal health care programs, annually.
4

5 6 IV. BACKGROUND

7 10. More prescription drugs are purchased through the Medicaid program
8 than through any other insurance program in the United States. The Medicaid
9 program is a joint federal-state program that provides health care benefits for
10 certain groups, primarily the poor and disabled. Under the Medicaid program, the
11 Federal government provides matching funds and ensures that the states comply
12 with minimum standards in the administration of the program.
13

14 11. As a result of its involvement in the Medicaid program, the federal
15 government provides at least half of the funds used to purchase Medicaid
16 reimbursable pharmaceuticals and related physician services. Not surprisingly, in
17 order to prevent waste, fraud and abuse, the Medicaid program has explicit
18 restrictions against compensation paid to physicians to induce the use of a
19 manufacturer's products. Medicare providers have a legal duty to familiarize
20 themselves with Medicare's reimbursement rules, including those stated in the
21 Medicare Manuals. Heckler v. Community Health Services of Crawford County,
22 Inc., 467 U.S. 51, 64-65 (1984). This duty also applies to Medicaid providers.
23

24 12. Growth Hormone Pharmaceuticals. Growth hormone (GH) is used
25 to cause growth in children who are deficient in the hormone or who have short
26 stature with normal growth hormone levels. GH is used for about 10 years in most
27 children who start it for GH deficiency. There are also a number of other FDA
28

1 approved indications for this drug where it is used for differing periods of time.
2 Currently, there are about 25,000 patients receiving GH.

3 13. Many years ago, prior to the discovery of the ability to create GH
4 using recombinant technology, GH was of human brain origin. In the 1970's,
5 several children developed a neurological disorder similar to mad cow disease and
6 the human brain source hormone was removed from the market. Almost thirty
7 years ago, in the late 1970's, Genentech developed the processes to create this
8 hormone using recombinant technology. A registry was created to follow these
9 children to ensure safety of this new technology.
10

11 **V. PFIZER'S MISCONDUCT**

12 14. The registries have continued, but not to legitimately gather research
13 data as there is very little that needs to be studied with this hormone. The true
14 reason the registries have continued, is to create a pretext to funnel kickbacks to
15 prescribing physicians, to promote market share. A number of pharmaceutical
16 companies pay physicians from \$800 to \$1,000 per patient, per year, to log
17 information from the patient's chart into the company's on-line registry. This
18 effort takes approximately 5 - 10 minutes, once every six months, to input/update
19 the patient's weight, height, growth rate and dosage. The payments are way out of
20 line with arms-length amounts, as the data is the same as the physicians are
21 already gathering in each patient's chart. Further, many physicians allow
22 pharmaceutical sales reps to use the physician's office to enter the data into the
23 registry internet site so the physician can be paid the kickback.
24
25

26 15. The pharmaceutical company Teva recently received FDA approval
27 for its GH product, TevTropin. Because Teva does not pay kickbacks, its product
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1 has not sold well, despite the fact that TevTropin is approximately 40% less
2 expensive than the competitors' GH products. In addition, all of these growth
3 hormones are the same. They use human DNA to code for the same 186 amino
4 acids. All of these products also have the same generic name.

5 16. Defendant's illegal payments in violation of the Anti-Kickback
6 Statute and the Stark Law have caused false claims to be submitted by healthcare
7 providers to Medicaid and other federally funded programs, and have caused
8 healthcare providers to use false records or statements to get false or fraudulent
9 claims paid or approved, by knowingly falsifying certification of compliance with
10 the Stark Act, 42 U.S.C. § 1395nn, and the Anti-Kickback Statute, 42 U.S.C. §
11 1320a-7b(b)(2). In turn, this conduct has also caused states to unknowingly
12 submit false claims to the United States for the United States' share of these
13 unreimbursable growth hormone claims under the Medicaid program.

14 17. These false claims regarding compliance with the Anti-Kickback
15 Statute and the Stark Law have involved Pfizer kickbacks of approximately \$7
16 million over the past 10 years and have resulted in Medicaid program payments of
17 more than one hundred million dollars.

18 VI. COUNT ONE

19 (For Violation of 31 U.S.C. § 3729 et seq.)

20 18. *Qui tam* plaintiff hereby realleges and incorporates herein by this
21 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
22 forth at length.

23 19. Defendant has knowingly caused to be submitted, false claims for
24 payment, as set forth above, in violation of 31 U.S.C. § 3729(a)(1). Additionally,
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1 defendant has knowingly caused to be used false records or statements to get false
2 or fraudulent claims paid by the United States, in violation of 31 U.S.C. §
3 3729(a)(2). As a result of such knowing submission of false claims, defendant has
4 wrongfully caused payments to be made from, and has wrongfully received
5 monies derived from, the United States Treasury in the millions of dollars.

6
7 **VII. COUNT TWO**

8 **(For Violation of Cal. Govt. Code § 12650 *et seq.*)**

9 20. *Qui tam* plaintiff hereby realleges and incorporates herein by this
10 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
11 forth at length.

12 21. Defendant's knowing misconduct as described above is in violation
13 of Cal. Govt. Code § 12650 *et seq.*, and has caused damage to the State of
14 California in an amount to be determined at trial.

15
16 **VIII. COUNT THREE**

17 **(For Violation of Del. Code Ann., Title 6, § 1201 *et seq.*)**

18 22. *Qui tam* plaintiff hereby realleges and incorporates herein by this
19 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
20 forth at length.

21 23. Defendant's knowing misconduct as described above is in violation
22 of Del. Code Ann., Title 6, § 1201 *et seq.*, and has caused damage to the State of
23 Delaware in an amount to be determined at trial.

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25 **IX. COUNT FOUR**

26 **(For Violation of Fla. Stat. 68.081 *et seq.*)**

27 24. *Qui tam* plaintiff hereby realleges and incorporates herein by this
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1 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
2 forth at length.

3 25. Defendant's knowing misconduct as described above is in violation
4 of Fla. Stat. 68.081 *et seq*, and has caused damage to the State of Florida in an
5 amount to be determined at trial.
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7 **X. COUNT FIVE**

8 **(For Violation of Haw. Rev. Stat. § 661-22 *et seq*.)**

9 26. *Qui tam* plaintiff hereby realleges and incorporates herein by this
10 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
11 forth at length.

12 27. Defendant's knowing misconduct as described above is in violation
13 of Haw. Rev. Stat. § 661-22 *et seq*, and has caused damage to the State of Hawaii
14 in an amount to be determined at trial.
15

16 **XI. COUNT SIX**

17 **(For Violation of 740 Ill. Comp. Stat. Ann. § 175/1 *et seq*.)**

18 28. *Qui tam* plaintiff hereby realleges and incorporates herein by this
19 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
20 forth at length.

21 29. Defendant's knowing misconduct as described above is in violation
22 of 740 Ill. Comp. Stat. Ann. § 175/1 *et seq*, and has caused damage to the State of
23 Illinois in an amount to be determined at trial.
24

25 **XII. COUNT SEVEN**

26 **(For Violation of La. Rev. Stat. Ann. § 46:439.1 *et seq*.)**

27 30. *Qui tam* plaintiff hereby realleges and incorporates herein by this
28

1 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
2 forth at length.

3 31. Defendant's knowing misconduct as described above is in violation
4 of La. Rev. Stat. Ann. § 46:439.1 *et seq*, and has caused damage to the State of
5 Louisiana and its Louisiana Medical Assistance Programs in an amount to be
6 determined at trial.

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8 **XIII. COUNT EIGHT**

9 **(For Violation of Mass. Ann. Laws Ch. 12, § 5(A)-(O) *et seq.*)**

10 32. *Qui tam* plaintiff hereby realleges and incorporates herein by this
11 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
12 forth at length.

13 33. Defendant's knowing misconduct as described above is in violation
14 of Mass. Ann. Laws Ch. 12, § 5(A)-(O) *et seq*, and has caused damage to the State
15 of Massachusetts in an amount to be determined at trial.

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17 **XIV. COUNT NINE**

18 **(For Violation of Nev. Rev. Stat. § 357.010 *et seq.*)**

19 34. *Qui tam* plaintiff hereby realleges and incorporates herein by this
20 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
21 forth at length.

22 35. Defendant's knowing misconduct as described above is in violation
23 of Nev. Rev. Stat. § 357.010 *et seq*, and has caused damage to the State of Nevada
24 in an amount to be determined at trial.

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26 **XV. COUNT TEN**

27 **(For Violation of New Hamp. Rev. Stat. Ann. § 167:61, *et seq.*)**

1 36. *Qui tam* plaintiff hereby realleges and incorporates herein by this
2 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
3 forth at length.

4 37. Defendant's knowing misconduct as described above is in violation
5 of New Hamp. Rev. Stat. Ann. § 167:61, *et seq.*, and has caused damage to the
6 State of New Hampshire in an amount to be determined at trial.
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8 **XVI. COUNT ELEVEN**

9 **(For Violation of Tenn. Code Ann. § 71-5-181 *et seq.*)**

10 38. *Qui tam* plaintiff hereby realleges and incorporates herein by this
11 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
12 forth at length.

13 39. Defendant's knowing misconduct as described above is in violation
14 of Tenn. Code Ann. § 71-5-181 *et seq.*, and has caused damage to the State of
15 Tennessee in an amount to be determined at trial.
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17 **XVII. COUNT TWELVE**

18 **(For Violation of Tex. Hum. Res. Code § 36.001 *et seq.***

19 40. *Qui tam* plaintiff hereby realleges and incorporates herein by this
20 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
21 forth at length.

22 41. Defendant's knowing misconduct as described above is in violation
23 of Tex. Hum. Res. Code § 36.001 *et seq.*, and has caused damage to the State of
24 Texas in an amount to be determined at trial.
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1 **XVIII. COUNT THIRTEEN**

2 **(For Violation of Va. Code Ann. § 8.01-216.3 *et seq.*)**

3 42. *Qui tam* plaintiff hereby realleges and incorporates herein by this
4 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
5 forth at length.

6 43. Defendant's knowing misconduct as described above is in violation
7 of Va. Code Ann. § 8.01-216.3 *et seq.*, and has caused damage to the State of
8 Virginia in an amount to be determined at trial.
9

10 **IXX. COUNT FOURTEEN**

11 **(For Violation of D.C. Code Ann. § 1-1188.13 *et seq.*)**

12 44. *Qui tam* plaintiff hereby realleges and incorporates herein by this
13 reference paragraphs 1 through 17, inclusive, hereinabove, as though fully set
14 forth at length.
15

16 45. Defendant's knowing misconduct as described above is in violation
17 of D.C. Code Ann. § 1-1188.13 *et seq.*, and has caused damage to the District of
18 Columbia in an amount to be determined at trial.

19 **WHEREFORE**, *qui tam* plaintiff prays for relief as follows:

20 1. Full restitution to the United States, the States of California,
21 Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, Tennessee,
22 Texas, Virginia and the District of Columbia of all money damages sustained by
23 each, respectively;
24

25 2. For three times the dollar amount proven to have been wrongfully
26 sold to, paid by or withheld from the United States, the States of California,
27 Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, Tennessee,
28

1 Texas, Virginia and the District of Columbia, respectively;

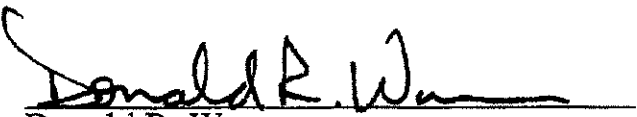
2 3. For maximum civil penalties for all false records, statements,
3 certifications and claims submitted to the United States, the States of California,
4 Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, New
5 Hampshire, Tennessee, Texas, Virginia and the District of Columbia, respectively;

6 4. For costs of suit and reasonable attorney's fees; and

7 5. For such other and further relief as the Court deems just and proper.
8

9 Respectfully Submitted,
10 WARREN • BENSON LAW GROUP

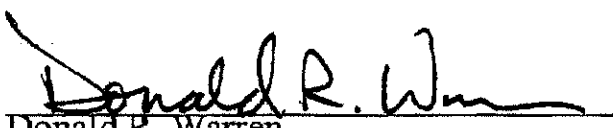
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12 Dated: June 5, 2006

13 
14 Donald R. Warren
15 Counsel for *qui tam* plaintiff Thomas Morrow

16
17 **PLAINTIFF DEMANDS A JURY TRIAL**

18
19 WARREN • BENSON LAW GROUP

20
21 Dated: June 5, 2006

22 
23 Donald R. Warren
24 Counsel for *qui tam* plaintiff Thomas Morrow
25
26
27
28

CERTIFICATE OF SERVICE

This is to certify that the foregoing Complaint and Notice of Interested Parties has been mailed, postage prepaid, June 6, 2006, to:

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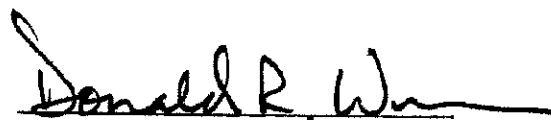
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Dated: June 6, 2006


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